Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Telecommunications Relay Services And Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	Docket 03-123

To: The Commission

COMMENTS IN SUPPORT OF PETITION FOR DECLARITORY RULING

Hands On Video Relay Services, Inc. ("Hands On"), by its counsel and pursuant to the Commission's Public Notice, DA 04-2062 (July 9, 2004), submits its comments in support of its petition for a declaratory ruling that minutes devoted to providing deaf, hard of hearing and speech disabled persons video VRS mail qualify as compensatory telecommunications relay service ("TRS") subject to reimbursement from the Interstate TRS Fund administered by the National Exchange Carrier Association. In support, the following is respectfully shown:

I. Introduction and statement of the issue presented.

The only issue for the Commission to determine is whether the minutes associated with recording a video VRS mail message for retrieval by a deaf, hard of hearing or speech disabled individual qualify as TRS. If those minutes are TRS, then providers are entitled to reimbursement for providing the service. If those minutes are not TRS, then providers are not entitled to reimbursement. As we show below, minutes devoted to recording video mail messages to be sent to and retrieved by deaf, hard of hearing and speech disabled persons are plainly TRS and are thus compensable.

II. What is TRS?

Section 225(a)(3) of the Communications Act of 1934, as amended, defines TRS as "telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device." Section 225(d)(2) of the Act further provides, "The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with Section 7(a) of this Act, the use of existing technology and do not discourage or impair the development of improved technology."

An analysis of video VRS mail under Section 225's definition of TRS and the decisions of this Commission, plainly shows that video VRS mail is TRS and is thereby compensable.

III. What is video VRS mail?

Video VRS mail is the VRS functional equivalent of voice mail. It is the most functionally equivalent manner for a deaf, hard of hearing or speech disabled person to retrieve messages left by a hearing person. It works as follows:

A hearing person who desires to calls a deaf, hard of hearing or speech disabled person calls a VRS provider's call center and is connected to a video interpreter. The hearing person gives either the IP address or name (if the deaf , hard of hearing or speech disabled person is registered with the VRS service) of the person to be called. The video interpreter then places a VRS call to the deaf, hard of hearing or speech disabled person with whom the hearing person wishes to converse. If the

called party does not answer, the hearing, calling party is given the option of leaving a message for the deaf, hard of hearing or speech disabled person. That message is recorded. That message is recorded in American Sign Language. That message is recorded in video form by the video interpreter. The call is then terminated. The recorded video message is then either emailed to the deaf, hard of hearing or speech disabled person, or by some other means the called party is alerted that he has a message. To retrieve his message, the deaf, hard of hearing or speech disabled person either simply plays the recorded video message back on his computer terminal or he connects back with the VRS provider, accesses his video mail box and plays his message. He then may call back the person who called him using VRS, or any other TRS service.

IV. Application of the definition of TRS to video VRS mail.

Pursuant to Section 225(a)(3), the three elements of TRS are:

1. A telephone transmission service,

2. that provides the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing person,

3. in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech to communicate using voice communication services by wire or radio.

We discuss each of these elements below.

A. Video VRS mail is a telephone transmission service.

The Commission has already determined that VRS is a telephone transmission service. In *Telecommunications Relay Services*, FCC 00-56, 15 FCC Rcd 5140, 5152 (2000), the Commission specifically held that VRS "is a telecommunications relay service because it provides the ability for individuals with hearing or speech disabilities 'to communicate by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not

have a hearing impairment or speech impairment to communicate using voice communications services by wire or radio,'" citing Section 225(A)(3). Similarly, in *Telecommunications Relay Services*, FCC 02-121, para. 10 (April 22, 2002), the Commission held that Internet Protocol Relay was TRS. In so doing it held that the "phrase 'telephone transmission service' should be interpreted broadly … to include any transmission service involving [telephonic equipment or devices] to the extent that such transmission provides the particular functionality that the definition specifies." The Commission emphasized that Section 225 requires it to be technology neutral and thus held that the phrase "encompasses all transmission using telephonic equipment or devices, whether over the public switched network, cable, satellite, or any other means, so long as the requisite functionality is provided." *Id.*

Furthermore the Commission found that consideration of whether a particular TRS service or methodology might be a telecommunications service or an information service is not relevant to resolution of whether the service is entitled to recover its costs from the Interstate TRS Fund. *Id.* at para. 13.

The Commission has further found that access to voice mail is a TRS service. In *Telecommunications Relay Services*, 15 FCC Rcd 5140, para. 92 (2000), the Commission held that functionally equivalent TRS required providing consumers with a hearing or speech disability the ability to navigate an interactive menu. "[T]o provide TRS that is functionally equivalent to telecommunications service provided to voice users, we must interpret our duty under section 225 to include the authority to require access through TRS to interactive menus. Interactive menu systems and recorded messages are increasingly used by businesses and services."

Similarly, in *Telecommunications Relay Services,* FCC 03-112, para. 63-65 (June 17, 2003), the Commission held that answering machine message retrieval and voice mail message retrieval were TRS functions necessary for functionally equivalent TRS service. The Commission stated, currently, there is no reference in our rules to retrieving answering machine messages through TRS.[1] This feature allows a TTY user to retrieve voice messages left on his or her voice mailbox or voice answering machine by an incoming call from a third party. Answering machine retrieval through TRS is accomplished when the recipient of the message, the TRS user, calls the TRS facility and has the CA listen to the voice messages. The CA transmits the messages in text back to the TRS user." *Id.* at para. 63 (additional footnotes omitted).

The Commission further explained, "The CA listens to the messages through a telephone handset and relays them back to the user as text.[2] Retrieving voice mailbox messages works similarly; however, because voice mailboxes generally use an access code or personal identification number (PIN), the TRS user instructs the CA how to access his or her voice mailbox before the CA does so. In addition, these instructions should address how the menu selection process works because the menu choices listed by voice mailboxes generally require a response within a short period of time (or otherwise the system 'times-out'), and thus the CA often must relay messages quickly." *Id.* at para. 64 (additional footnotes omitted).

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1 "This is not to be confused with our rule on Voice Mail and Interactive Menus, which addresses TRS calls from a TRS user *to* a called third party that reaches the called party's voice mail or answering system's interactive menu. *See* 47 C.F.R. Sec. 64.604(6). The Voice Mail and Interactive Menus rule addresses CAs handling such systems through TRS. Answering Machine Message Retrieval addresses on the process of retrieving messages for a person with a disability from his or her own answering machine or voice mail." *Id.* at n.218.

2 "The CA will be able to both listen to voice messages and send text messages simultaneously if a TTY with an acoustic couple that works with telephone headset and the answering machine do not share the same telephone line. If they do, then the CA will need to listen to the complete messages before relaying the messages in text." *Id.* at n.222.

The Commission concluded, "Based our responsibility to ensure that TRS users receive functionally equivalent telecommunications services, we conclude that answering machine and voice mail retrieval are TRS features that must be provided to TRS users. The record reflects that TRS providers currently provide these features, it is technologically feasible, and these features are desired by TRS consumers." *Id.* at para. 65.

Since VRS is TRS and since access to interactive menus such as voice mail menus is TRS, and since voice mail and answering machine message retrieval is TRS, it stands to reason that VRS mail is similarly TRS and thus a telephone transmission service.

B. Video VRS mail provides the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing person.

It requires very little explanation to conclude that video VRS mail provides the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing person. The message originates with a hearing person placing a telephone call to a deaf, hard of hearing or speech disabled person. Once the called person retrieves the message, the communication from the hearing person is effected, and the called person can respond to the message as appropriate. Information is thus communicated from a hearing person to a person with a hearing or speech impairment just as would be the case were the deaf, hard of hearing or speech disabled person to use VRS to retrieve a message stored in an answering machine or a voice mail box. However, as we show below, the latter method of message retrieval is awkward, time consuming and inefficient.

C. Video VRS mail allows communication in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech to communicate using voice communication services by wire or radio.

Video VRS mail allows the VRS user to communicate in a manner that is functionally equivalent to the ability of a hearing person using voice communications services by wire or radio. A hearing person is alerted to a voice mail message by a visual signal from his telephone, caller ID box, or answering machine, or by an audio signal when he goes off hook with his telephone. The hearing person then presses a button on his answering machine to play back the message or calls his voice mail box and enters an access code or password. The message is then played back for him. A deaf, hard of hearing or speech impaired individual using VRS would follow a similar procedure to retrieve video VRS mail. He would be alerted by either a visual signal on set-top device (such as the D-Link videophone), or would receive a notice on his computer terminal by email. He would then either access his video mail account on the video mail server of the VRS provider (the functional equivalent of a voice mail box), or he would play a video file which the VRS provider has emailed to him (the functional equivalent of an answering machine). Either way, the deaf, hard of hearing or speech disabled person would receive the communication in a manner which is functionally equivalent to the way that a hearing person would receive a voice mail communication.

For a VRS user, video VRS mail, as outlined above, would be the most functionally equivalent way to receive the functional equivalent of voice mail message. In fact, video VRS mail is a much more efficient means of voice mail messaging for VRS users than if the VRS user employed VRS to retrieve voice mail messages such as is done through text based relay.

Voice mail retrieval through text-based relay contemplates that a deaf, hard of hearing or speech disabled person would call into the TRS provider's call center, have a communications

assistant listen to his messages (recording them for the duration of the call) and type them out for him. It can readily be seen, however, that such a procedure is awkward and unwieldy for the deaf, hard of hearing or speech disabled person using VRS, and serves unnecessarily to increase the cost of VRS service.

This procedure is awkward for the deaf, hard of hearing or speech disabled person because it requires this person to have a telephone voice mail service or answering machine to which unanswered calls are directed. However, VRS users receive calls on their computers or on their TV set-top box (such as the D-Link). There is currently no technology of which we are aware that would allow incoming VRS calls to roll over to an answering machine or to a voice mail service. Thus, reliance on answering machine voice mail retrieval service for VRS users would necessitate the placing of a *second* call by the caller or by the video interpreter in order to leave a voice mail for the VRS user. It is doubtful many callers would have the patience to place that second call, or would even be aware that the deaf, hard of hearing or speech disabled person had an answering machine or voice mail box associated with his telephone number. Moreover, it is doubtful that it is a TRS call for a video interpreter to leave a voice message for a deaf, hard of hearing or speech disabled person, and thus it is far from clear that the Commission would allow VRS providers to be compensated for making a voice call to a deaf, hard of hearing or speech disabled person's voice mail box or answering machine.3 Lastly, what possible sense does it make to require *three separate phone calls* – i.e., (1) the original unanswered call; (2) the call to the voice mail box or answering machine; and (3) the call from the deaf, hard of hearing or speech disabled person to the VRS center to retrieve the message, when video VRS mail can accomplish the result with but one call?

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3 This is certainly an issue the Commission should clarify in this proceeding

Such a procedure is grossly inefficient. It increases costs for VRS providers and thus for telephone rate payers with no increased functionality for deaf, hard of hearing or speech disabled persons. In fact, it decreases functionality for these persons because it unnecessarily ties up scarce video interpreter time, thereby increasing answer times.

V. Conclusion.

In sum, the minutes that it takes a video interpreter to record video VRS mail are TRS. Those minutes are TRS because video VRS is a telephone transmission service -- as the Commission has defined that term -- that provides the ability for an individual who has a hearing loss or a speech disability to engage in communication by wire or radio with a hearing person in a manner that is functionally equivalent to the ability of an individual who does not have a hearing loss or speech impairment to communicate using voice communication services by wire or radio.

Video VRS mail allows a deaf, hard of hearing or speech disabled person to retrieve telephone communications left for that person by hearing persons. Video VRS mail allows the deaf, hard of hearing or speech disabled person to retrieve those messages in a manner which is functionally equivalent to the manner in which hearing persons retrieve their telephone voice messages. Therefore the minutes a video interpreter devotes to recording video VRS mail are compensable TRS minutes for which the VRS provider is entitled to reimbursement from the Interstate TRS Fund.

The goal of TRS in all its forms, including VRS is functional equivalency. Allowing deaf and hard of hearing persons who communicate in ASL to receive recorded ASL messages would contribute to the functional equivalency of relay service. There is no reason to find that video mail is not relay service. Video mail is plainly a desired service. It is plainly technically feasible given

that it is already being provided by several VRS providers. Accordingly, Hands On reiterates its request that the Commission declare that video VRS mail provided in connection with VRS service is compensable relay service eligible for payment from the Interstate TRS Fund.

Respectfully submitted,

HANDS ON VIDEO RELAY SERVICES, INC.

By_____/s/_____
George L. Lyon, Jr.
Its Counsel

Lukas, Nace, Gutierrez & Sachs, Chartered
1650 Tyson's Blvd., Suite 1500
McLean, Virginia 22102
(703) 584-8664
August 16, 2004

Certificate of Service

I, Linda J. Evans, do hereby certify that copies of the foregoing Comments In Support of Petition for Declaratory Ruling were sent on this 16th day of August, 2004, via first-class mail, except where noted, postage pre-paid, to the following:

Gary Cohen
Lionel B. Wilson
Helen M. Mickiewicz
Jonady Hom Sum
505 Van Ness Ave.
San Francisco, CA 94102

Katherine Keller
Publisher, STSnews.com
P.O. Box 88
Belleville, WI 53508

Michael B. Fingerhut, Esq.
Richard Juhnke, Esq.
Sprint Corporation
401 9 Street, N.W., Suite 400
Washington, D.C. 20004

Brenda Battat
SHHH
Suite 1200
7910 Woodmont Ave
Bethesda, MD 20814

Karen Peltz-Strauss, Esq.
KPS Consulting
3508 Albermarle St
Washington, DC 20008

David O'Connor, Esq.
Counsel for Hamilton Relay
Holland & Knight LLP
2099 Pennsylvania Ave., NW, Suite 100
Washington, DC 20006

Beth Wilson, Ph.D. Executive Director, SHHH
401 9 Street, N.W., Suite 400
Washington, D.C. 20004

Claude Stout
Executive Director
Telecommunications for the Deaf, Inc.
8630 Fenton Street, Suite 604
Silver Spring, MD 20910-3803

Ronald H. Vickery
404 Benton Dr.
Rome, Georgia 30165

Mark C. Rosenblum, Esq.
Peter H. Jacoby, Esq.
AT&T Corp.
295 North Maple Avenue
Basking Ridge, NJ 07920

Nancy J. Bloch
Executive Director
National Association of the Deaf
814 Thayer Avenue
Silver Spring, MD 20910-4500

Mr. Thomas Chandler, Esq.
Federal Communications Commission
445 l2th Street, SW
Rm: 6-C415
Washington, DC 20554

Mr. Greg Hlibok, Esq.
Consumer and Governmental Affairs Bureau
Federal Communications Commission
445 12th Street, SW
Rm: 6-C224
Washington, DC 20554

Ms. Janet Sievert, Esq.
Consumer and Governmental Affairs Bureau
Federal Communications Commission
445 l2th Street, SW
Washington, DC 20554

Beth Wilson
Executive Director
Self Help for Hard of Hearing People
7910 Woodmont Ave., Suite 1200
Bethesda, MD 20814

Larry Fenster, Esq.
MCI
1133 19th Street, NW
Washington, DC 20336

Ms. Cheryl King
Assistant Chief, Disabilities Rights Office
Consumer and Governmental Affairs Bureau
Federal Communications Commission
445 l2th Street, SW
Washington, DC 20554

Ms. Erica Myers, Esq.
Federal Communications Commission
445 12th Street, SW
Rm: 6-C415
Washington, DC 20554

John Archer, Esq.
Hagan Wilka & Archer, P.C.
Suite 418
100 S. Phillips Avenue
Sioux Falls, SD 57105

Kelby Brick, Chair
Deaf and Hard of Hearing
Consumer Advocacy Network
814 Thayer Avenue
Silver Spring, MD 209 10-4500

Julie Miron
Communications Access Center
1631 Miller Road
Flint, Michigan 48503

_____/s/_____
Linda J. Evans